

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 190 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHANABHAI J JHALA

Versus

AMARABEN K JHALA

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Appearance:

MR TV SHAH for Petitioners

MR ND NANAVATI for Respondent No. 1

SERVED for Respondent No. 7

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/07/97

ORAL JUDGEMENT

This appeal is directed against the judgment and order dated March 15, 1985 passed by the learned 3rd Joint Civil Judge (SD), Junagadh below application ex. 5 in Spl. Civil Suit No. 124/84.

2. The suit was filed by the plaintiffs(respondent Nos. 1 to 6 herein) for partition of the suit properties. In application ex. 5, the plaintiffs prayed

before the trial court to pass an order for restraining the appellants-defendants from transferring or alienating the suit properties, on the ground that the plaintiffs have one half share in the suit properties and the defendants have the other half share in the suit properties. The State Bank of Saurashtra was also joined as defendant no.5 in view of the fact that a Fixed Deposit of Rs. 20,000/- in the name of deceased Gigahai Punjabhai Zala and defendant no.1 Chhanabhai Jashbhai Zala was lying in the Bank. After hearing the parties, the trial court passed the interim order dated March 15, 1985, directing both the parties to maintain status quo till the disposal of the suit. The present appeal is by defendant nos. 1 to 4 against the aforesaid interim order.

3. At the hearing of the appeal Mr T.V.Shah, learned Advocate for the appellants has submitted that the trial court should not have passed the interim order in respect of all the suit properties as even the plaintiffs' case was that the defendants have one half share in the properties.

Since the question about ownership of the different suit properties is yet to be decided and the interim injunction granted by the trial court is already in force since last 12 years, in the facts and circumstances of the case, it would be just and proper to continue interim injunction granted by the trial court till the disposal of the suit and to direct the trial court to hear and decide the suit at an early date.

4. Mr. Shah has further pointed out that in view of the status quo order, the Bank is not renewing the Fixed Deposit ( FDR No. 60955 FD A/c. No. 288), and therefore, there will be loss of interest of a substantial amount, if the Fixed Deposits are not renewed. He has therefore, requested that the Bank be directed to renew the Fixed Deposits.

The request appears to be reasonable. It will be open to the appellants to request the State Bank of Saurashtra to renew the Fixed Deposit (F.D.R.No. 60955 in Account No. 288) so that there is no loss of interest between the intervening period. As and when such an application is made by the appellants to the Bank, the Bank is directed to consider the same without being influenced by the order of status quo passed by the trial court and being continued by this Court. The order of status quo is to restrain the parties from transferring the properties and it does not prevent the Bank from

renewing Fixed Deposits.

5. Mr. Shah has further submitted that since even according to plaintiffs, the defendant nos. 1 to 4 -the present appellants have one half share in the properties, the appellants be permitted to withdraw one half amount out of the aforesaid Fixed Deposit amount.

Mr. Shah further submits that in case, the withdrawal of amount is not permitted by the Bank for any reason, the appellants may be permitted to take loan of 50% of the amount of Fixed Deposit with interest accumulated thereon and the appellants shall pay the difference of rate between the rate of interest on the deposit and the rate of interest on the loan being advanced by the Bank on such Fixed Deposit so that the remaining 50% of the Fixed Deposit remains intact.

In view of the facts and circumstances of the case, after the FDR is renewed, it will be open to the appellants to withdraw 50% of the accumulated amount in the Fixed Deposit or to take loan of 50% of the accumulated amount after their filing an undertaking in the trial court that if so required at the time of disposal of the suit they will deposit the said amount in the trial court as may be directed by the trial court A copy of such undertaking shall also be served on the learned Advocate for the plaintiffs in the trial court before approaching the bank.

6. In view of the above discussion, the interim injunction granted by the trial court shall continue till the disposal of the suit. As the suit is pending since 1984, the trial court is directed to dispose of the suit at the earliest, and latest by December 31, 1997.

7. The appeal stands disposed of in terms of the aforesaid directions. There shall be no order as to costs.

Sd/-

[M.S.SHAH, J.]

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Amp/-